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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,150	09/25/2001	Hugh Barrass	062891.0525	1755
5073	7590	01/28/2008	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			LUGO, DAVID B	
			ART UNIT	PAPER NUMBER
			2611	
			NOTIFICATION DATE      DELIVERY MODE	
			01/28/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/964,150	BARRASS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	David B. Lugo	2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 09 November 2007.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-14 and 22-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-14 and 25-30 is/are allowed.
- 6) Claim(s) 22-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see page 7, filed 11/9/07, with respect to claims 1-14 have been fully considered and are persuasive. The rejection of claims 1-14 has been withdrawn.
2. Applicant's arguments filed 11/9/07, with respect to claim 22, have been fully considered but they are not persuasive.
3. Applicant has amended claim 22 to recite that the plurality of second PSDs "do not comply with a public standard" and argues that Graziano discloses that the second PSDs comply with a public standard, namely G.SHDSL and HDSL.2. However, from a plain reading of the claim language, "a public standard" refers to *one* public standard, the particular *one* public standard not being specified in the claim. Accordingly, the second PSDs of Graziano meet the amended claim limitation when "a public standard" that the plurality of second PSDs "do[es] not comply with" is considered an ADSL standard, or some other standard which is not one of G.SHDSL and HDSL.2. Accordingly, the amendment to claim 22 fails to overcome the prior art of record. Newly added claims 23-30 are further considered below.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graziano et al. in view of Baker et al. U.S. Patent 2002/0172273.

Regarding claim 22, Graziano discloses a system for choosing a PSD according to line conditions, the system including a data switch (DSLAM) (see para. 352), where Graziano states that the power spectral density (PSD) of the transmitted signal is programmable and supports different defined PSDs (para. 347), PSDs are stored as sets of coefficients (para. 246), said stored PSDs complying with public standards (para. 10), and where one of the stored PSDs is chosen for specific line conditions in communication with the one or more CPE devices (para. 245-248).

Graziano does not expressly disclose that the data switch is operable to communicate substantially simultaneously with two or more CPE devices using at least two different PSDs. However, a DSLAM communicating with two or more CPE devices is well known in the art. Further, Graziano discloses being able to communicate with a CPE using a PSD chosen for that specific CPE (see abstract, para. 5). Accordingly, it would have been obvious to one of ordinary skill in the art to implement the teaching of selecting one of a plurality of PSDs for each of a number of CPEs in order to provide communication to a plurality of users using optimally selected PSDs. In addition, the second PSDs do not comply with ADSL standard G.992.1, which is a public standard not complied with by the second PSDs.

Further, Graziano does not expressly disclose that the data switch is operable to automatically communicate using a PSD defined by a network administrator. Baker discloses that DSLAMs are often programmed by system administrators (para. 3). It would have been obvious to one of ordinary skill in the art to use a PSD defined by a system administrator to establish communication between the DSLAM and the CPE because the administrator will establish parameters including a PSD which will ensure initialization of communication.

Regarding claim 23, one of ordinary skill in the art would recognize that the switch in the combination of Graziano with Baker is operable to direct a CPE device to communicate with the switch using a particular PSD.

Regarding claim 24, the use of control packets with associated information is well known in the art. It would have been obvious to one of ordinary skill in the art to use control packets to allow the switch to direct the CPE device and provide parameters defining one or more of the characteristics of the particular PSD to be used to the CPE device in order to enable communication using the selected PSD.

***Allowable Subject Matter***

6. Claims 1-14 and 25-30 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Lugo whose telephone number is 571-272-3043. The examiner can normally be reached on M-F; 9:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shuwang Liu can be reached on 571-272-3066. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID B. LUGO  
PRIMARY PATENT EXAMINER

1/21/08